

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Petitioner, proceeding *pro se*, submitted a construed motion to amend his petition (Dkt. 43) and a motion for extension of time to file a reply in support of that motion (Dkt. 44). Now, having considered petitioner's motions and the responses from respondent (Dkts. 43 & 44), the Court finds and rules as follows:

(1) The Court noted the motion to amend for consideration on August 13, 2010.

41.) Petitioner, in his motion for an extension of time, requested that he be granted an extension to October 31, 2010 to submit his reply in support of the motion to amend. (Dkt. 45.) Respondent did not object to an extension, but maintained that the requested date was excessive and suggested September 10, 2010 as an adequate date for the extension. (Dkt. 45.) Petitioner thereafter submitted his reply, signed on August 17, 2010, well before either the

01 requested or suggested dates for the extended deadline. (Dkt. 46.) Considering the brief and  
 02 reasonable period of time needed for the submission of the reply, petitioner's motion for an  
 03 extension of time (Dkt. 44) is hereby GRANTED.

04 (2) Federal Rule of Civil Procedure 15 provides that "leave [to amend a pleading]  
 05 shall be freely given when justice so requires." Fed. R. Civ. P. 15 (a). Leave to amend may  
 06 be denied where there is undue delay, bad faith or dilatory motive, undue prejudice to the  
 07 opposing party, or when the amendment would be futile. See *Foman v. Davis*, 371 U.S. 178,  
 08 182 (1962). Respondent here objects to petitioner's motion to amend, asserting that  
 09 petitioner's original claims bear no similarity to the proposed amended claims, the former of  
 10 which he contends were manifestly available to petitioner at the time petitioner filed his original  
 11 petition. Respondent asserts that he would be prejudiced if petitioner were "allowed to  
 12 completely change course and thereby obligate [him] to file a new answer[.]" (Dkt. 43 at 2.)  
 13 Petitioner, in reply, asserts that he is abandoning only the unexhausted claims presented in his  
 14 original petition. (Dkt. 46.)

15 The Court finds no basis for concluding that the need to file a new answer would unduly  
 16 prejudice respondent. Accordingly, petitioner's motion for leave to amend (Dkt. 38) is  
 17 GRANTED.<sup>1</sup> Respondent shall submit a second supplemental answer, with any additional  
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19 1 The Court notes, however, that petitioner's intention with respect to the proposed amended  
 20 petition remains, in part, unclear. While petitioner states in his reply that he is "abandoning only the  
 21 unexhausted claim[]" in his original petition (Dkt. 46 at 2), he does not include, in his proposed amended  
 22 petition, the exhausted claims included in his original petition. Given his stated intention to abandon  
 only his unexhausted claims, the Court will, unless advised otherwise by petitioner, consider both the  
 exhausted claims included in petitioner's original petition (Dkt. 6) and the claims presented in his  
 amended petition (Dkt. 38). Because respondent has already responded to the exhausted claims in  
 petitioner's original petition, he need not again address those claims in the second supplemental answer.

01 record as needed, within **forty five (45) days** of the date of this Order. The noting date for  
02 consideration of respondent's current answer/supplemental answer (Dkts. 12 & 23) is hereby  
03 STRICKEN from the calendar.

04 (3) The Clerk is directed to send a copy of this Order to the parties and to the  
05 Honorable John C. Coughenour.

06 DATED this 28th day of September, 2010.

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11 Mary Alice Theiler  
12 United States Magistrate Judge  
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